

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

CRC Communications LLC, d/b/a OTELCO,

Complainant,

v.

Massachusetts Electric Company d/b/a National  
Grid, and Verizon New England Inc.,

Respondents

D.T.C. 22-4

**OTELCO MOTION FOR LEAVE TO FILE REPLY  
AND SUPPORTING EVIDENTIARY MATERIAL**

CRC Communications LLC, d/b/a OTELCO (“OTELCO”) respectfully requests that the Department of Telecommunications and Cable (“Department” or “DTC”) grant OTELCO leave to file its Reply to Responses of National Grid, Verizon and DPU to OTELCO’s Motion for Enforcement of Final Order in DTC 22-4 (“Reply”), and new supporting evidentiary material set forth in Confidential Exhibit 1, available at this secured Drop Box [link](#). In support thereof, OTELCO respectfully offers the following:

**OTELCO’s Motion for Leave**

1. OTELCO filed its Motion for Enforcement of Final Order in DTC 22-4 (“Motion for Enforcement”) pursuant to the governing procedural rules for general motions. *See* 207 C.M.R. § 1.04(5)(a). Massachusetts Electric Company d/b/a National Grid (“National Grid”), Verizon New England Inc. d/b/a Verizon Massachusetts (“Verizon”) and the Department of Public Utility

(“DPU”) each filed responses to OTELCO’s Motion for Enforcement on April 4, 2023.<sup>1</sup> The responses included unsworn factual allegations and argument regarding the extent to which certain information claimed to be necessary to evaluate OTELCO’s boxing requests and provide itemized make-ready estimates in accordance with the Department’s Order is in the Pole Owners’ possession. The Department’s procedural rules do not explicitly provide for *replies* to general motions without prior leave of the hearing officer. *See* 207 C.M.R. § 1.00, *et sec.*; *see also* *Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, for approval by the Department of Public Utilities of two long-term contracts to purchase wind power and renewable energy certificates, pursuant to St. 2008, c. 169, § 83 and 220 C.M.R. § 17.00 et seq.*, 2011 Mass. PUC LEXIS 22, \*11. For the reasons more fully set forth below, OTELCO requests leave to file its Reply to National Grid’s, Verizon’s and DPU’s Responses to OTELCO’s Motion for Enforcement.

2. Pursuant to 207 C.M.R. § 1.10(7), the Department may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of a hearing. In response to the Pole Owners’ unsworn argument provided in their responses to OTELCO’s Motion for Enforcement, concerning new information allegedly needed to evaluate OTELCO’s boxing requests, OTELCO recently obtained the previously undisclosed O-Calc Pro Analysis Reports (“O-Calc Reports”) performed by National Grid’s outside engineering firm, Osmose. The extensive data set forth in these O-Calc Reports, generated by Osmose for the poles included on OTELCO’s applications, is directly relevant to, and contradicts,

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<sup>1</sup> *See* Response of Massachusetts Electric Company d/b/a National Grid to Motion of CRC Communications LLC d/b/a OTELCO, Opposition of Verizon New England Inc. d/b/a Verizon Massachusetts to Motion for Enforcement of the Final Order to OTELCO’s Motion for Enforcement of Order and the Department of Public Utilities Comments on Post Order Motion, all filed in DTC 22-4 on April 4, 2023.

the Pole Owners' factual claims regarding their ability to comply with the Final Order requirements without having to conduct new surveys. Specially, these Reports provide all relevant information needed to evaluate OTELCO's boxing requests using the criteria that the Pole Owners argue would prevent the use of boxing, including whether a pole has side-taps, whether the pole is a corner pole, whether the pole is already boxed, and whether the pole is on an embankment. *See Declaration of Lawrence M. Slavin, Ph.D.* ("Slavin Decl.") ¶¶ 6-8 attached hereto as Attachment 2. OTELCO therefore requests leave to file its Reply as well as the O-CALC Reports obtained by OTELCO to date (for poles located in North Hampton), set forth in Confidential Exhibit 1, available at this secured Drop Box [link](#).

### **Good Cause Waiver of DTC Procedural Rule Requirements**

3. The DTC Procedural Rules contemplate deviation from any procedural requirement, including the late filing of documents and evidence and the reopening of hearings upon a showing of good cause. Pursuant to 207 C.M.R. § 1.01(4), "[w]here good cause appears, not contrary to statute, the Commission and any presiding officer may permit deviation from 207 C.M.R. 1.00." Additionally, 207 C.M.R. § 1.10(7) provides that "[t]he Department may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of hearing, such time to be determined by the Presiding Officer" and subsection (8) states that "[n]o person may present additional evidence after having rested . . . except upon motion and showing of good cause."

4. Good cause is a general standard for granting equitable relief that appears throughout the DTC as well as the DPU Procedural Rules.<sup>2</sup> Although the regulations do not

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<sup>2</sup> The procedural rules of the DTC and the DPU both provide several examples of good cause waivers of filing deadlines and other rule requirements upon good cause shown. Both Chapters 207 and 220 are applicable to the

contain a definition of *good cause*, the Department has defined good cause in the context of specific cases and provided a balancing test to evaluate requests for good cause waivers.

“Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.” *In Re Cms Generation Co.*, No. D.P.U. 92-166-A, 1993 WL 560290 (Nov. 12, 1993); citing *Boston Edison Company*, D.P.U. 90-335-A, at 4 (1992) (*‘Boston Edison’*). See also *Ruth C. Nunnally, d/b/a L & R Enterprises*, D.P.U. 92-34-A, at 3 (1993) (*‘Nunnally’*).

Under the *Boston Edison* standard for good cause, the Department first considers the statutory and regulatory requirements underlying the standard. Next, the Department requires a balancing of the public interest, the interests of the appealing party, and the interests of other parties. *Boston Edison* at 4. Good cause for purposes of reopening a hearing has been defined as showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision.<sup>3</sup> Thus OTELCO’s request for leave must be examined in light of the circumstances surrounding this matter, and weighed in the context of the underlying statutory or regulatory requirements, and finally, balanced with regard to the public interest and the interests of all parties.

### **Relevant Circumstances Regarding OTELCO’s Motion for Leave**

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current proceedings pursuant to the pole attachment complaint procedures, and the term “Department” may refer to the DTC or the DPU, depending upon the context. See 220 C.M.R. § 45.01 (“The general procedural rules set forth at 207 C.M.R. 1.00: *Procedural Rules* and 220 C.M.R. 1.00: *Procedural Rules* are also applicable”). See also 220 C.M.R. § 1.00 *et seq.* 220 C.M.R. § 1.01(4) (“Where good cause appears . . . the Commission . . . may permit deviation from these rules.”); § 1.11(7) (The Department may, for good cause shown, allow the parties to file evidentiary documents . . .); § 1.11(8) (“No person may present additional evidence after having rested . . . except upon motion and showing of good cause.”).

<sup>3</sup> *Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, for approval by the Department of Public Utilities of two long-term contracts to purchase wind power and renewable energy certificates, pursuant to St. 2008, c. 169, § 83 and 220 C.M.R. § 17.00 et seq.*, 2011 Mass. PUC LEXIS 22, \*12, citing *Machise v. New England Telephone and Telegraph Company*, D.P.U. 87-AD-12-B at 4-7 (1990); *Boston Gas Company*, D.P.U. 88-67 (Phase II) at 7 (1989); *Tennessee Gas Pipeline Company*, D.P.U. 85-207-A at 11-12 (1986).

5. In the present matter, OTELCO filed its Motion for Enforcement due to insurmountable disputes with both Pole Owners as to the correct application and interpretation of the DTC Final Order in DTC 22-4 issued October 11, 2022 (“Order”). The extent of these disputes and the refusal of the Pole Owners to comply with the Final Order requirements was not fully apparent until several months after issuance of the Order. *See* Declaration of Debbie Brill-Poulin (“Brill-Poulin Decl.”) at ¶¶ 4-8, attached hereto as Attachment 1. It is now clear, in light of the Pole Owners’ behavior leading up to the filing of OTELCO’s Motion for Enforcement, as well as their written responses to OTELCO’s Motion for Enforcement, that the Pole Owners interpretation and application of the Order requirements violates the long-standing requirements to provide nondiscriminatory access to their poles on just and reasonable rates, terms and conditions. *Id.* The Pole Owners argue, among other things, that the language of the Order justifies and supports their requirement that all of the poles impacted by OTELCO’s boxing request be resurveyed, further delaying and increasing the cost of OTELCO’s network deployment. They claim these costly, time consuming surveys are necessary to provide information they claim is not contained in the existing surveys, or in their possession.

6. To verify the Pole Owners’ unsworn statements that the information needed to evaluate OTELCO’s boxing requests *was not collected in the existing surveys*, OTELCO recently requested these materials directly from Osmose. Brill-Poulin Decl. at ¶ 7. On Friday April 14, 2023, Osmose provided OTELCO the O-Calc Reports generated for the poles included in OTELCO’s applications for pole attachments permits in North Hampton, Massachusetts. *Id.* at ¶ 9. These several-page reports include all of the information the Pole Owners claim is necessary to evaluate OTELCO’s boxing requests, including whether a pole has side-taps, is a corner pole, has

other attachments (e.g., street lights), is on a steep embankment or is already boxed, as well as significant additional information. *See* Slavin Decl. at ¶ 7. It is unclear why National Grid has not looked to these reports to answer data requests concerning the prevalence of boxing on its poles, or to fulfill its obligation to provide non-discriminatory access to its poles, upon just and reasonable rates, terms and conditions.

7. It is important to recognize that this information, while highly relevant to the ability of the Pole Owners to evaluate boxing requests, was not put in issue until the Pole Owners claimed they did not have sufficient information to evaluate OTELCO's requests. When OTELCO originally requested to be allowed to box poles, neither Pole Owner claimed the surveys in their possession were inadequate to evaluate boxing requests. Rather, at that time, the Pole Owners simply claimed they never allow boxing on their poles. *See* Declaration of David Allen, ¶ 7 and Exhibit A (April 14, 2022).

8. It was not until well after issuance of the Final Order, when both National Grid and Verizon claimed the survey information *was now outdated* and would need to be redone, that the issue of whether the Pole Owners could evaluate OTELCO's boxing requests using those surveys was questioned. Even then, the Pole Owners' statements focused on age of the surveys, not the content. At that time, David Allen pointed out that there would be no need to collect data that the parties already had in their possession, and suggested that the focus be on the scope of work that is needed to address any potential changes. *See* Motion at 10. Indeed, OTELCO has consistently maintained that the Pole Owners had all the information necessary to evaluate OTELCO's boxing requests without the need for additional surveys. The recently disclosed O-Calc Reports

completely undermine the Pole Owners' arguments that such information is not in their possession and should be considered by the Department.

### **Balancing of Interests**

9. The newly obtained information provided in Confidential Exhibit 1 should be considered by the Department as this information bears significant relevance to the Pole Owners' claims that additional preconstruction surveys are required to comply with the Final Order directives to evaluate OTELCO's boxing requests. OTELCO further believes that its Reply will assist the Department in evaluating OTELCO's underlying arguments regarding the correct interpretation of the Order.

10. The balance of interests weighs heavily in favor of permitting OTELCO's filings for several reasons. First, OTELCO will suffer the greatest harm if the request for leave is denied. It is OTELCO's deployment plans that depend upon the Pole Owners' compliance with the Final Order. The Pole Owners' unreasonable and unjust insistence upon further physical surveys will significantly delay and increase the costs of OTELCO's network deployment. The Pole Owners, on the other hand, are not harmed by delaying OTELCO's deployment. In fact, the Pole Owners now urge the Department to require OTELCO to file a new attachment complaint, which would allow them an additional six months, at least, to continue evading the Department's Final Order directives.<sup>4</sup>

11. Importantly, the delays in deployment thus far stem primarily from the obfuscation and misstatements of the Pole Owners regarding their own use and allowance of boxing on their

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<sup>4</sup> Lest we forget, the Pole Owners also attempted to extend the timeline of the complaint proceedings in this docket to beyond six months. Furthermore, Verizon points out that "nothing in the Order directs the Pole Owners to 'complete make-ready in a reasonable time frame.'" Verizon Response at 17. Verizon's brash statements evince its unapologetic refusal to apply a reasonable standard to any term or condition of pole access.

poles. Even in its Response, in addressing “OTELCO’s request for Osmose to provide OTELCO with the same information it provides National Grid” for better understanding the make-ready estimates, National Grid merely asserts “the information OTELCO would receive from Osmose would not be of particular assistance to OTECLO.” Grid Response at 19. Now that OTELCO has some of this information in hand, it has become abundantly clear that National Grid’s statements are entirely misleading. The Pole Owners should not be allowed to benefit from their misstatements and failure to provide significant relevant information to OTELCO and the Department.

12. In closing, granting OTELCO leave to reply to the Pole Owners’ arguments with supporting evidentiary documents only recently obtained by OTELCO in order to disclaim assertions set forth in the Pole Owners’ Responses serves the public interest in ensuring the Department has considered all significant information and argument in support of its findings and that the Final Order is interpreted and applied correctly by the parties. If the request for leave is denied, the Pole Owners will simply have to answer for these issues in a separate complaint proceeding, which is less efficient, and a greater drain on the Department’s resources. The parties’ and the public interest are thus best served by considering all relevant information now, not requiring OTELECO to file an entirely new complaint.

WHEREFORE, OTELCO respectfully requests that the Department grant leave for OTELCO to file its Reply to National Grid’s, Verizon’s and DPU’s Responses to OTELCO’s Motion for Enforcement of the DTC Final Order and Submit Evidentiary Documents.



April 18, 2023

Respectfully submitted,

/s/

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# **Attachment 1**

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**Before the  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE  
Commonwealth of Massachusetts**

CRC COMMUNICATIONS LLC, D/B/A  
OTELCO,

*Complainant,*

v.

MASSACHUSETTS ELECTRIC  
COMPANY D/B/A NATIONAL GRID,  
AND VERIZON NEW ENGLAND INC.

*Respondents.*

File No. DTC- 22-4

**DECLARATION OF DEBBIE BRILL-POULIN**

I, Debbie Brill-Poulin, declare as follows:

1. My name is Debbie Brill-Poulin. OSP Licensing Manager at Otelco, Inc., parent company of CRC Communications LLC (“OTELCO”). I have 17 years of experience in performing work required by this position. In my role as Licensing Manager, I assist in the submission OTELCO’s pole attachment applications and I deal directly with both National Grid and Verizon MA representatives and their outside contractors who complete preconstruction surveys for OTELCO’s applications.

2. I make this Declaration in support of OTELCO’s Motion for Leave to File its Reply and Supporting Evidentiary Material (“Motion for Leave”) and OTELCO’s Reply to Responses of National Grid, Verizon and the DPU to OTELCO’s Motion for Enforcement of Final Order in DTC 22-4 filed contemporaneously herewith in the above-captioned case. I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

3. In this Declaration I address the following issues: 1) why OTELCO only recently requested National Grid's outside engineering firm, Osmose, to provide OTELCO the O-Calc Pro Analysis Reports ("O-Calc Reports") generated by OTELCO as part of National Grid's preconstruction survey requirements; and, 2) the date that OTELCO received the O-Calc Reports.

***National Grid and Verizon MA's Demand for New Preconstruction Surveys Focused on Surveys Being "Outdated" Rather than "Incomplete"***

4. As explained by David Allen, following the entry of the Final Order on October 11, 2022, myself and other OTELCO representatives exchanged emails and participated in phone calls with the Pole Owners to discuss OTELCO's pending boxing requests in light of the directives provided by the Department of Telecommunications and Cable ("DTC") in its Final Order. Declaration of David Allen, filed February 21, 2023, in support of OTELCO Motion to Enforce Final Order in DTC 22-4 at ¶ 4.

5. In the course of discussions, representatives of both National Grid and Verizon ("Pole Owners") stated that, in order to determine whether specific poles are suitable for boxing, OTELCO would need to cancel and resubmit the affected applications, at which time each Owner would have to resurvey the impacted poles, at OTELCO's expense. Initially, National Grid representative Joy Banks stated that National Grid must reconsider make-ready estimates due solely to the passage of time. I believe Verizon also argued that the surveys were "outdated" and that the new surveys would need to take into account completed make-ready work. I do not recall either Pole Owner stating that additional information would need to be collected to evaluate boxing requests – only that the existing surveys were "outdated" and therefore could not be relied upon.

6. For this reason, at that time, OTELCO had no reason to question whether the surveys had captured all information necessary to evaluate OTELCO's boxing requests. To the contrary, it has consistently been OTELCO's position that the surveys did collect all necessary information, and the Pole Owners refusal to utilize the existing surveys for this information is unreasonable because of the regular delays experienced (which demonstrate that the survey data is not so "outdated" that it is unreliable) and that *if* any changes had occurred due to the passage of time – the Pole Owners should be aware of such changes.

***Both National Grid's and Verizon's Replies to OTELCO's Motion to Enforce Claim the Existing Surveys Did Not Collect All Relevant Information***

7. The Pole Owners' responses to OTELCO's Motion to Enforce make very clear that the Pole Owners are both arguing that information regarding side-taps, corner poles, embankments, the extent to which poles already were boxed, and the like, was never collected in the original surveys. Because the claim that the information collected in the original surveys is factual information that was not provided in a signed and sworn declaration, but simply argued in the Pole Owner responses, OTELCO determined that we should attempt to verify this information if we could. To that end, I contacted Osmose directly and requested that it provide OTELCO any O-Calc analysis of the poles it had surveyed for National Grid in connection with OTELCO's original pole attachment applications.

8. OTELCO did not request this specific information previously for two reasons: 1) the primary basis for not using the survey information up until the Responses were filed was the passage of time; OTELCO did not believe there was a question regarding the fact that the Osmose surveys had the necessary information to evaluate boxing requests; and,

2) our past experience in requesting information directly from Osmose regarding the cost breakdowns for make-ready estimates was met with an immediate and negative response from National Grid, and a refusal to provide the requested data. This information only became clearly relevant in light of the Pole Owners' replies to OTELCO's Motion to Enforce wherein they plainly state the existing surveys do not contain information regarding certain criteria used to evaluate boxing requests.

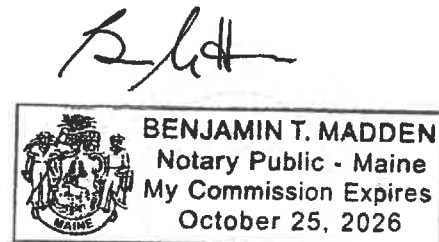
***OTELCO's Request for O-Calc Reports***

9. On Friday April 14, 2023, Osmose provided OTELCO the O-Calc Reports generated for the poles included in OTELCO's applications for pole attachments permits in Northampton, Massachusetts. The O-Calc Reports, attached to OTELCO's Reply as Confidential Attachment 1, are true and correct copies of the O-Calc Reports I received directly from Osmose. At that time, I requested Osmose to provide the O-Calc Reports generation for poles included on OTELCO's applications for Belchertown and Palmer over the next week or so.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By:   
Debbie Brill-Poulin

Dated: April 18, 2023



# **Attachment 2**

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**Before the  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE  
Commonwealth of Massachusetts**

CRC COMMUNICATIONS LLC, D/B/A  
OTELCO,

*Complainant,*

v.

MASSACHUSETTS ELECTRIC  
COMPANY D/B/A NATIONAL GRID,  
AND VERIZON NEW ENGLAND INC.

*Respondents.*

File No. DTC- 22-4

**DECLARATION OF LAWRENCE M. SLAVIN, Ph.D.**

I, Lawrence M. Slavin, declare as follows:

1. My name is Dr. Lawrence M. Slavin. I am principal and co-owner of Outside Plant Consulting Services, Inc., a private practice specializing in standards, guidelines and construction practices for outside plant facilities in the telecommunications and power industries. My address is 15 Lenape Avenue, Rockaway, New Jersey, 07866.
2. I received a B.S. in Mechanical Engineering from The Cooper Union for the Advancement of Science and Art. I then pursued an M.S. in Engineering Mechanics at New York University, where I also received my Ph.D. in Mechanical Engineering. My professional background includes a wide range of consulting experiences in various roles in the telecommunications and power industries. In addition to my other interests and activities, I represent the national telephone industry, via the Alliance for Telecommunications Industry Solutions, on the National Electrical Safety Code (NESC) Committee. I actively participate on various NESC subcommittees, including the relevant



Subcommittee 4 (Overhead Lines – Clearances) and Subcommittee 5 (Overhead Lines – Strength & Loading), as well as on Subcommittee 7 (Underground Lines), Interpretations Subcommittee, Executive Subcommittee and Main Committee. I also serve on Accredited Standards Committee 05, responsible for several utility standards, including *ANSI O5.1, Wood Poles, Specifications and Dimensions*. I am also a past and present contributor to the frequently referenced, widely used and respected Telcordia *Blue Book – Manual of Construction Procedures*. More details regarding my background are attached to my declaration as Attachment A.

3. My participation in these organizations is directly relevant to the present dispute between OTELCO and both National Grid and Verizon (“Pole Owners”).

4. I previously provided pre-filed testimony in this docket at the request of OTELCO. Among other things, my testimony addressed the practice of pole “boxing,” or “opposite side” construction (typically the rear side of the pole, facing away from the road), as it relates to efficient construction techniques for overhead communication lines and compliance with appropriate safety codes and industry practices, and how the ability to use this method, as opposed to the installation of a new, larger pole, will increase the feasibility of providing broadband services to the public. My testimony also addressed Verizon’s and National Grid’s claims that boxing creates safety issues and complicates the completion of future work, and I discussed the benefits of boxing to both pole owners and other attachers, as well as any possible drawbacks.

5. I also previously submitted a Declaration in support of OTELCO’s Motion for Enforcement of the Final Order in DTC 22-4 on February 21, 2023.


6. OTELCO has now requested that I address the O-Calc Pro Analysis Reports (“O-Calc Reports”), performed by National Grid’s outside engineering firm, Osmose, in connection with National Grid’s original surveys of the poles on OTELCO’s applications, which are included with OTELCO’s Motion for Leave to File Reply and Supporting Evidentiary Documents, as Confidential Attachment 1. As Ms. Brill-Poulin explains in her declaration, OTELCO obtained the O-Calc Reports for the poles in North Hampton directly from Osmose on April 14, 2023, and she expects to get additional O-Calc Reports for the poles in Belchertown and Palmer later this week.

7. I have reviewed a subset of the O-Calc Reports provided to OTELCO. These several-page reports include extensive information about each surveyed pole including the information necessary to assess the existing load on the pole and its capacity to tolerate additional load. Based on my review, the information needed to assess OTELCO’s boxing requests using the Pole Owners’ cited criteria -- including whether a pole has side-taps, is a corner pole, has other attachments (e.g., street lights), is on a steep embankment or is already boxed, as well as significant additional information -- is included in these comprehensive reports.

8. With this information, and the information already available to the pole owners as I describe in my February 21, 2023 Declaration, there is no need for Verizon and National Grid to redo their surveys to consider OTELCO’s boxing requests. In the rare instance where conditions have changed in the field in a manner that impacts OTELCO’s request, a qualified contractor acting under OTELCO’s supervision, in coordination with make-ready performed by the pole owner and/or other attachers, as appropriate, would be

capable of applying objective criteria and perform boxing without creating a safety problem,  
or compromising reliability.

I declare under penalty of perjury under the laws of the United States that the  
foregoing is true and correct to the best of my knowledge.

By:   
Dr. Lawrence M. Slavin

Dated: April 18, 2023